sums in purchasing a water plant and constructing a lighting plant, while Allegheny had already established its system of lighting and water supply, was all that appeared. But the court has recognized the existence of the distinction in several decisions. *Tippecanoe County* v. *Lucas,* 93 U. S. 108, 115; *New Orleans* v. *New Orleans Water Works Co.,* 142 U. S. 79, 91; *Covington* v. *Kentucky,* 173 U. S. 231, 240. Mr. JUSTICE MATTHEWS, for the court, in *Railroad Co.* v. *Ellerman,* 105 U. S. 166, 172, says: "Whatever powers the municipal body rightfully enjoys over the subject [wharves and levees] is derived from the legislature. They are merely administrative, and may be revoked at any time, not touching, of course, any property of the city actually acquired in the course of administration." And Mr. JUSTICE PECKHAM, in *Worcester* v. *Worcester Consol. St. R. Co.,* 196 U. S. 539, 551, says: "In general it may be conceded that it can own private property, not of a public or governmental nature, and that such property may be entitled, as it is said, 'to constitutional protection.' Property which is held by these corporations upon conditions or terms contained in a grant and for a special use, may not be diverted by the legislature." The distinction was also recognized in the *Dartmouth College Case,* but whether legislation which destroys a municipality and annexes it to another offends against the Federal Constitution with regard to this class of property remains, as yet, undecided by the Supreme Court. F. B. F.

THE SCALPER IN LAW AND IN EQUITY.—By virtue of the very recent decree of the Supreme Court in the suit of *Marcus K. Bitterman et al.* v. *The Louisville and Nashville Railroad Co.* (1907), 28 Sup. Ct. Rep. 91, the railroads appear to have won a complete victory in their fight against the scalpers.

Ordinary railroad tickets, issued without restrictions or limitations, have generally been held transferable and any holder entitled to transportation thereon. *Sleeper* v. *Railroad Co.,* 100 Pa. St. 259; *Carsten* v. *Railroad Co.,* 44 Minn. 454, 47 N. W. 49; *Nichols* v. *Railroad* Co., 23 Ore. 123, 31 Pac. 296; *Railroad* v. *Ing,* 29 Tex. Civ. App. 398, 68 S. W. 722; *Gleason* v. *Willamette Valley,* 71 Fed. 712. But where the ticket itself shows that, in consideration of a reduced rate of fare, it is expressly agreed that it shall not be transferable, or shall be void in the hands of other than the first purchaser, such ticket is a valid contract. *Railway Co.* v. *Frank,* 110 Fed. 689; *Post* v. *Railroad Co.,* 14 Neb. 110; *Way* v. *Railroad Co.,* 64 Ia. 48; *Walker* v. *Railroad Co.,* 15 Mo. App. 333; *Drummond* v. *Railroad Co.,* 7 U. 118; *Davis* v. *Railroad Co.,* 107 Ga. 420; *Dangerfield* v. *Railroad Co.,* 62 Kan. 85; also in point, *Mosher* v. *I. M. and S. R. Co.,* 127 U. S. 390, 32 L. Ed. 249, and *Boylan* v. *Hot Springs R. Co.,* 132 U. S. 146, 33 L. Ed. 290.

The railway companies, finding that their right to refuse to honor such tickets in the hands of transferees was largely defeated through the ingenuity of brokers and scalpers, sought aid of congress and the state legislatures. So far, congress has not acted in this matter, though urged to do so by the Interstate Commerce Commission in its report in 1900 and subsequent years. The state legislatures have quite generally enacted statutes restricting the sale

of railway tickets, known as special or non-transferable tickets, to authorized agents of the companies issuing them. Such statutes have been held constitutional in *Fry* v. *State,* 63 Ind. 552; *Burdick* v. *People,* 149 Ill. 600, 36 N. E. 948, 24 L. R. A. 152; *State* v. *Corbett,* 57 Minn. 345, 59 N. W. 317; *Commonwealth* v. *Keary,* 198 Pa. St. 500, 48 A. 472; *State* v. *Bernheim,* 19 Mont. 512, 49 Pac. 441; *In re O'Neill,* 41 Wash. 174, 83 Pac. 104; *State* v. *Manford,* 97 Minn. 173, 106 N. W. 907; *Jannin* v. *State,* 42 Tex. Crim. R. 631, 51 S. W. 1126. These acts are not directed against commerce and affect it only incidentally. *Nashville, etc., Ry.* v. *Alabama,* 128 U. S. 96, 9 Sup. Ct. 28, 32 L. Ed. 352. The courts of New York held a similar statute to be void in *People ex rel. Tyroler* v. *Warden of Prison,* 157 N. Y. 116, 51 N. E. 1006, 43 L. R. A. 264. Brokers were permitted to deal in tickets of all kinds in Louisiana and also in Missouri, with the result that the legal victories of the railways were of little consequence.

The struggle was transferred to the federal courts in equity. The first cases decided were those of the *Louisville & Nashville Ry. Co.* v. *Duckworth* and *Chicago & St. Louis Ry. Co.* v. *McConnell* (1897), 82 Fed. 65, in which the defendants were enjoined from selling the return portion of round-trip tickets issued on account of the Tennessee Centennial Exposition. It was insisted that there were no precedents for such exercise of equity jurisdiction. and none was cited; the court held that such an objection was not fatal to the assumption of jurisdiction by a court of equity; the restraining order was based on the principle that one who wrongfully interferes in a contract between others and, for purposes of gain to himself, induces one of them to break it, is liable to the party injured, and his continued interference may be a ground for injunction when the injury resulting is irreparable. The same principle was announced in *Delaware, etc., Ry. Co.* v. *Frank* (1901), 110 Fed. 689, though here an injunction was refused because the railroads concerned were pooling passenger earnings contrary to law. In two cases decided in 1904, complainants prayed that the restraining order be made to include tickets issued and *to be issued* in the future. This prayer was refused in so far as it related to future tickets in *Louisville & Nashville R. Co.* v. *Bitterman,* 128 Fed. 176, but was granted in *Louisville & Nashville R. Co.* v. *Caffrey; Baltimore, Ohio & Southwestern R. Co.* v. *same; Illinois Central R. Co.* v. *same,* 128 Fed. 770. On appeal, the circuit court of appeals for the fifth circuit held it was error to deny the prayer of complainant in the case of *Louisville, etc., R. Co.* v. *Bitterman,* supra, and directed that the restraining order be modified so as to include tickets to be issued in the future. *Louisville & N. R. Co.* v. *Bitterman et al.,* 144 Fed. 34. Later in the same year, in a suit brought in the northern district of Illinois, a restraining order was granted which included non-transferable tickets to be issued from time to time as the needs of business might require. *Penn. R. Co.* v. *Bay,* 150 Fed. 770.

The scalpers won a partial victory in *Baltimore & Ohio R. Co.* v. *Hamburger et al.,* 155 Fed. 849, decided in 1907. Here an injunction to restrain the purchase and sale of certain non-transferable excursion tickets was refused because the regulation as to non-transferability was not filed with

the Interstate Commerce Commission at the time of filing the schedule of rates and fares, as required by the Act of June 29, 1906—the neglect to file making this feature of the tickets illegal and void and its violation no basis for an injunction. The case of *Railroad Co.* v. *Bitterman* was appealed to the Supreme Court, where it was affirmed without reservation. *Marcus K. Bitterman et al., petitioners,* v. *Louisville & Nashville Railroad Co.* (1907), 28 Sup. Ct. Rep. 91. The business of dealing in non-transferable reduced-rate excursion tickets for profit, to the injury of the railroad, is held to be an actionable wrong. The wanton disregard of the rights of the carrier constitutes legal malice on the part of the scalper, who stands in the position of one who maliciously induces a breach of contract. J. C. H.

THE BASIS OF EQUITABLE JURISDICTION IN CASES OF FRAUD.—The case of *Beaton* v. *Inland Township et al.* (1907), — Mich. —, 113 N. W. 361, suggests the discussion as to the source of the jurisdiction of courts of equity in cases of fraud. An outgoing township treasurer induced the incoming treasurer, who was the petitioner in the case, to sign a receipt for a sum of money greater than that actually turned over to him, by representing that certain vouchers which were among the papers turned over were uncanceled, whereas as a matter of fact he had already received credit for them in an accounting with the township board. The trial court decreed the cancellation of the receipt, and this was affirmed on appeal by a divided court, the majority holding that the case was governed by *Hancock Life Ins. Co.* v. *Dick* (1897), 114 Mich. 337, 43 L. R. A. 566; *Ins. Co.* v. *Blaine* (1906), 144 Mich. 218, *Macey* v. *Macey* (1906), 143 Mich. 138, 5 L. R. A. (N. S.) 1036. There were three dissenting judges, and their dissent was based on the ground that the petitioner was only liable to the township for the amount turned over to him, that the receipt was only evidence of that amount, which might be contradicted by parol, and "the mere fact that a receipt is given at the conclusion of an alleged fraudulent transaction relating to personal property is not enough to establish the jurisdiction of a court of equity to investigate the transaction for the purpose of canceling or refusing to cancel the receipt."

A reference to the Michigan cases on which the majority relied *seems* to indicate that the Michigan court regards fraud as of itself an independent ground of equitable jurisdiction.

In England the rule seems firmly established that courts of equity always *have* jurisdiction in a case of fraud, except in cases of fraudulent wills, and the jurisdiction is there considered as existing, not because of anything peculiar in the nature of fraud itself, but for historical reasons. The doctrine is that, inasmuch as the only relief to be had in cases of fraud prior to the invention of the special action on the case, and its offshoots, assumpsit and trover, was in equity, that the gradual acquisition by law courts of jurisdiction to grant relief against fraud through these actions merely gave a concurrent remedy, and, in accordance with familiar principles, could not operate to deprive the equity courts of their ancient jurisdiction. The question which presents itself to an English court of equity under this doctrine is not whether or not jurisdiction *exists,* but rather, whether or not it will be